

Before the
 Federal Communications Commission
 WASHINGTON, D.C. 20554

In re Application of)	
)	
South Seas Broadcasting, Inc.)	Facility ID No. 54768
)	NAL/Acct. No. MB200741410375
For Renewal of License for)	FRN: 0006947618
Station WVUV(AM), Leone,)	File No. BR-20050928ADD
American Samoa)	
)	

FORFEITURE ORDER

Adopted: April 19, 2012

Released: April 20, 2012

By the Chief, Media Bureau:

I. INTRODUCTION

1. In this Forfeiture Order, the Media Bureau (“Bureau”) issues a monetary forfeiture in the amount of eighteen thousand dollars (\$18,000) to South Seas Broadcasting, Inc. (“South Seas”) for (1) willfully and repeatedly violating Section 73.1350 of the Commission’s rules (“rules”),¹ by engaging in operation of Station WVUV(AM), Leone, American Samoa (“Station”), at an unauthorized site; (2) willfully and repeatedly violating Section 73.1740 of the rules,² by leaving the Station silent without proper authorization; and (3) willfully and repeatedly violating Section 73.1015 of the rules, by failing to respond to Commission communications.³

II. BACKGROUND

2. During the last renewal cycle, South Seas timely filed the above-captioned application to renew the Station’s license (“Renewal Application”). District Council Assemblies of God in American Samoa (“District Council”) filed a Petition to Deny the Renewal Application. Therein, District Council alleged that South Seas no longer had access to the tower site specified in its license. District Council also asserted that the Station had been silent for a period of more than a year and had been operating at greatly reduced power for a period of several years without prior Commission approval.

3. After reviewing all the facts and circumstances, the Bureau concluded that: (1) while the Station had not been silent for a period of more than a year, it had failed to timely obtain Commission authorization for two periods of silence – from March 13, 2000 (when South Seas acquired the Station), through April 27, 2000, and from December 2003 to March 8, 2004; (2) South Seas had operated the Station at a variance from the facilities authorized in its license without Commission authorization for a period of nearly eight months – from June 1, 2005, to February 28, 2006; and (3) South Seas had failed on several occasions to respond to Commission inquiries.⁴ Ultimately, the Bureau granted in part and

¹ 47 C.F.R. § 73.1350.

² 47 C.F.R. § 73.1740.

³ 47 C.F.R. § 73.1015.

⁴ *South Seas Broadcasting, Inc.*, Memorandum Opinion and Order and Notice of Apparent Liability, 23 FCC Rcd 6474, 6479 ¶¶ 13, 16 (MB 2008) (“*Order*” or “*NAL*”).

denied in part the Petition to Deny, proposed monetary forfeitures totaling eighteen thousand dollars (\$18,000) for South Seas violations of the rules,⁵ and renewed the Station's license for a term of two years from the release date of the *Order* (i.e., through April 16, 2010). South Seas did not file a license renewal application for the Station on or before April 16, 2010, the license expiration date specified in the *Order*. On April 11, 2011, the Bureau notified South Seas that the Station's license was cancelled.⁶

4. South Seas submitted a response to the *NAL* ("Response") on May 27, 2008. South Seas requests that the proposed forfeiture "be set aside."⁷ South Seas does not contest the Bureau's findings that it violated the Commission's rules. Instead, it seeks to minimize and/or excuse each of the violations.⁸ In addition, South Seas asserts that there are mitigating factors present. Specifically, South Seas alleges it has a long history of compliance with the rules and a record of public service.⁹ It also alleges financial hardship. Finally, South Seas argues that it is a victim of "selective enforcement of the rules."¹⁰

III. DISCUSSION

5. The forfeiture amount proposed in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934, as amended ("Act"),¹¹ Section 1.80 of the Rules,¹² and the Commission's *Forfeiture Policy Statement*.¹³ In determining the appropriate forfeiture amount, Section 503(b)(2)(E) of the Act requires that we take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require.¹⁴

6. *Unauthorized Discontinuance of Operations (Section 73.1740(a)(4))*. South Seas does not dispute that it violated Section 73.1740(a)(4) of the rules when it failed to obtain Commission

⁵ The Bureau proposed forfeitures of five thousand dollars (\$5,000) for each of the two periods during which South Seas discontinued service without Commission authorization, a forfeiture of four thousand dollars (\$4,000) for the period during which South Seas operated the Station at a variance from the facilities authorized in the Station's license, and a forfeiture of four thousand dollars (\$4,000) for South Seas' failure to respond to Commission communications. *Id.* at 6479, ¶ 16.

⁶ See Letter from Peter H. Doyle, Chief, Audio Division, Media Bureau, to South Seas Broadcasting, Inc. (dated April 11, 2011). The Station is now identified as "DWVUV" in the Bureau's CDBS database.

⁷ Response at 10. South Seas captioned its pleading a "Petition for Reconsideration." The pleading, however, opposes the forfeiture proposed in the *NAL*. Because the *NAL* merely *proposed* rather than *imposed* a forfeiture, the Bureau's action was interlocutory in nature. Section 1.106(a)(1) of the Commission's Rules specifically prohibits petitions for reconsideration of such interlocutory orders. See 47 C.F.R. § 1.106(a)(1). See also *State of Oregon*, Letter, 23 FCC Rcd 11576 (MB 2008). Accordingly, we treat the pleading as the "written statement seeking reduction or cancellation of the proposed forfeiture" specifically authorized in the *NAL*. See *NAL*, 23 FCC Rcd at 6481, ¶ 21.

⁸ Response at 2-5.

⁹ Response at 6.

¹⁰ Response at 9.

¹¹ 47 U.S.C. § 503(b).

¹² 47 C.F.R. § 1.80.

¹³ *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*, Report and Order, 12 FCC Rcd 17087 (1997), *recon. denied*, 15 FCC Rcd 303 (1999) ("*Forfeiture Policy Statement*").

¹⁴ 47 U.S.C. § 503(b)(2)(E).

authorization for the Station's silence following its acquisition of the Station. Nor does it dispute that it failed to obtain such authorization when the Station was silent for several months in late 2003 and early 2004. South Seas, however, does seek to excuse its failures. As detailed below, we find its arguments unpersuasive.

7. South Seas claims that it was unaware that, once it had acquired the Station (which had discontinued operations under the previous licensee), it had to "specifically request authorization to remain silent while it made preparations to return the station to operation."¹⁵ However, violations resulting from inadvertent error or failure to become familiar with the FCC's requirements are willful violations.¹⁶ South Seas argues that, during the Station's first period of silence, it "attempted to keep the Commission apprised every step of the way as to its ongoing problems with returning WVUV(AM) to full-power operation" and asserts that "[t]o impose a forfeiture on South Seas for this brief period of silence elevates form over substance since, as noted, the Commission was already aware of WVUV(AM)'s off-air status."¹⁷ We find this argument unpersuasive, particularly given South Seas failure to timely respond to Commission inquiries about the Station's operational status.¹⁸ In any event, we note that compliance with Section 73.1740(a)(4) is important in and of itself.¹⁹

8. South Seas attempts to excuse its failure to seek Commission authorization for the Station's second period of silence. South Seas characterizes this failure as "mere oversight" and argues it "hardly rises to the level of a 'willful and repeated violation' of Section 73.1740 of the Rules."²⁰ As noted, it is well established that administrative oversight or inadvertence is not a mitigating factor warranting cancellation or reduction of a forfeiture.²¹ Moreover, we affirm our finding that South Seas' failure to seek authorization for the Station's silence was both "willful" and "repeated." South Seas need not have intended to violate the Commission's rules for its failure to be "willful" for purposes of Section

¹⁵ Response at 2.

¹⁶ See *Southern California Broadcasting Co.*, Memorandum Opinion and Order, 6 FCC Rcd 4387, 4387 ¶ 4 (1991), *recon. denied*, 7 FCC Rcd 3454 (1992) ("*Southern California*") (stating that "inadvertence ... is at best, ignorance of the law, which the Commission does not consider a mitigating circumstance").

¹⁷ Response at 2.

¹⁸ *NAL*, 23 FCC Rcd at 6476 ¶ 4, 6479 ¶16.

¹⁹ When a licensee discontinues operations for an extended period of time, the public is harmed through diminished service. *Renewal Reporting Requirements for Full Power, Commercial AM, FM and TV Broadcast Stations*, Notice of Proposed Rulemaking, 8 FCC Rcd 49, 49 ¶ 5(1993) ("*Renewal Reporting Requirements NPRM*"). See also *See Media Bureau Announces Revisions to License Renewal Procedures and Form 303-S; Radio License Renewal Cycle to Commence on May 2, 2011*, Public Notice, 26 FCC Rcd 3809, 3810 (MB 2011) (revising FCC Form 303-S to, among other things, require a licensee to certify that its station had not been silent for any period of more than 30 days and to require a licensee who cannot certify to this to submit an explanatory exhibit stating the dates during which the station was silent (or operating less than its prescribed minimum operating hours)). Section 73.1740(a)(4) requires a licensee to notify the Commission when causes beyond the licensee's control make it impossible to adhere to the station's minimum operating schedule, and requires a licensee to seek authorization for any period of limited or discontinued authorizations exceeding 30 days. In this way, it enables the Commission to remain informed about the operational status of a station and permits the Commission to monitor the service that station is or is not providing to its community. This, in turn, enables the Commission to ensure that licensees broadcast in the public interest, a responsibility imposed by the Communications Act of 1934, as amended. *Renewal Reporting Requirements NPRM*, 8 FCC Rcd at 49.

²⁰ Response at 4.

²¹ *Southern California*, 6 FCC Rcd at 4387 ¶ 4 (1991).

503(b).²² In addition, as the Station was silent from December 2003 until March 13, 2004, the violation was “repeated” for purposes of Section 503(b).²³

9. *Operation at a Variance from Terms of Authorization (Section 73.1350)*. South Seas argues that “there was not sufficient time to request special temporary authorization” prior to operating the Station at a variance from the facilities authorized in its license.²⁴ South Seas also points out that it was operating at a “greatly reduced power.”²⁵ According to South Seas, given the location and the reduced power, the potential for interference to other licensed broadcast stations “was simply nonexistent.”²⁶ We find South Seas’ arguments inapposite. It is the Commission, not South Seas, that must assess the potential for interference and do so prior to granting special temporary authority for a station to operate at a variance from the facilities authorized in its license.²⁷ We also reject South Seas’ argument that “[r]ather than imposing a forfeiture on South Seas, the Commission should be commending South Seas for its resourcefulness in restoring broadcast service to the public.” While we recognize South Seas’ efforts to rehabilitate the Station and get it back on the air, we believe there was sufficient time to notify the Commission and request special temporary authority to operate at a variance from the facilities specified in the Station’s license. When South Seas acquired the Station, it was aware that the Station was silent and that its facilities had been damaged by a fire. Had South Seas exercised due diligence, it would have discovered how extensive the damage was more than two weeks prior to the date on which the Station’s license would automatically have expired. The situation in which South Seas found itself was one of its own making.²⁸ Neither South Seas’ argument that it lacked the time to seek prior authorization for the Station’s temporary facilities nor its argument that the risk of interference to other stations was minimal excuses South Seas’ failure to comply with the Commission’s rules.

10. *Failure to Respond to Commission Inquiries (Section 73.1015)*. South Seas challenges the Commission’s finding that it failed to timely respond to Commission inquiries.²⁹ South Seas states that it has “continually kept the Commission apprised of the status of WVUV(AM) and has NEVER

²² Section 312(f)(1) of the Act defines “willful” as “the conscious and deliberate commission or omission of [any] act, irrespective of any intent to violate” the law. 47 U.S.C. § 312(f)(1). The legislative history of Section 312(f)(1) clarifies that this definition of willful applies to Sections 312 and 503(b) of the Act, H.R. REP. No. 97-765, 51 (Conf. Rep.), and the Commission has so interpreted the term in the Section 503(b) context. *See Southern California*, 6 FCC Rcd 4387-88 ¶ 5.

²³ Section 312(f)(1) of the Act defines “repeated” as “the commission or omission of [any] act more than once or, if such commission or omission is continuous, for more than one day.” 47 U.S.C. § 312(f)(1). *See also Southern California*, 6 FCC Rcd at 4388 ¶ 5 (applying this definition of repeated to Section 503(b) of the Act).

²⁴ Response at 3.

²⁵ *Id.* at 3-4.

²⁶ *Id.* at 4.

²⁷ If a licensee needs to operate at a variance from the terms of its authorization, the Commission requires the licensee to seek prior authorization. It does so to ensure that any changes to the operations of a station will not cause interference to other authorized stations and will not create a hazard to air navigation.

²⁸ *See, e.g., P & R Temmer, d/b/a Mobile Communications Service Company*, Memorandum Opinion and Order, 93 FCC 2d 1051, 1062 (1983) (finding that problems “result[ing] from independent business judgments made by the licensee” did not constitute circumstances outside the licensee’s control), *aff’d sub nom. P & R Temmer v. FCC*, 743 F. 2d 918 (D.C. Cir. 1984) (affirming Commission’s finding that licensee’s failure to comply with the Commission rule at issue resulted from “its own business decisions” and thus was “attributable to circumstances under [licensee’s] control”).

²⁹ Response at 5.

knowingly failed to respond to any Commission inquiry it received.”³⁰ South Seas notes that, if the Commission sent correspondence to the Station’s address in American Samoa, the letters “were probably lost in the vastness of the Pacific Ocean” and cites the fact that mail service to and from Pago Pago is “incredibly unreliable.” South Seas states that it “cannot be held liable for the U.S. Postal Service’s failure to deliver the mail.” We find that South Seas cannot excuse its failure to timely respond to Commission inquiries on these grounds. Staff sent each inquiry to an address within the continental United States which South Seas itself had listed as its mailing address and the mailing address for its contact representatives.³¹

11. *History of Compliance and Public Service.* South Seas argues that it has a long history of compliance with the Commission’s rules and a record of public service.³² South Seas asserts that its stations “operate ‘on a shoestring’ in a remote U.S. territory with a precariously fragile economy” and argues that “imposing a Forfeiture on South Seas would necessitate a reduction in the amount of public service and a reduction in the news staff.” We find these arguments moot given the Bureau’s cancellation of the Station’s license last year.

12. *Financial Hardship.* South Seas argues that imposition of the forfeiture would be a financial burden.³³ The Commission will not consider reducing or canceling a forfeiture in response to a claim of inability to pay unless the licensee of the station at issue submits: (1) federal tax returns for the most recent three-year period; (2) financial statements prepared according to generally accepted accounting practices; or (3) some other reliable and objective documentation that accurately reflects the licensee’s current financial status.³⁴ South Seas did not submit any information regarding its finances. Accordingly, in the absence of sufficient information to support a decision to the contrary, we decline to reduce the proposed forfeitures on the basis of financial hardship.

13. *Inconsistent Enforcement of Rules.* South Seas asserts that the Commission’s enforcement of its rules is inconsistent. Specifically, South Seas argues that the station operated by District Council – KJAL(AM), Tafuna, American Samoa – is “a hotbed of rule violations.”³⁵ South Seas contends that “the Commission has never done anything about District Council’s numerous violations, nor any of the other stations in American Samoa that flagrantly violate Commission Rules.”³⁶ South Seas, however, has provided no specific evidence to support its allegations regarding District Council. Indeed, South Seas has not even specified which rules it believes District Council has violated in its operation of

³⁰ *Id.* (emphasis in original).

³¹ In the *NAL*, we found that South Seas had failed to timely respond to two letters from the Commission. *NAL*, 23 FCC Rcd at 6479 ¶ 16. The first was dated February 4, 2004, and was mailed to P.O. Box 1787, Cleveland, Mississippi 38732. We note that South Seas listed this as its mailing address and the mailing address for its contact representative in an application for the Station filed in January 2004. *See* Application File No. BMJP - 20040128ANG. The Commission sent a follow up letter to South Seas on February 25, 2004. This letter was addressed to South Seas at 9408 Grand Gate Street, Las Vegas, Nevada 89143. The Commission sent a second inquiry to South Seas on November 25, 2004. It was sent to the same Las Vegas address. We note that South Seas itself listed this Las Vegas address as its mailing address and the mailing address for its contact representative on the Renewal Application and on its requests for special temporary authority referenced in its Response. *See, e.g.*, Application File No. BLESTA - 20061127ADL.

³² Response at 6-7.

³³ Response at 8.

³⁴ *See NAL*, 23 FCC Rcd at 6481, ¶ 24.

³⁵ Response at 8.

³⁶ *Id.*

KJAL(AM), nor has it identified the other stations it believes have violated the Commission's rules. Accordingly, we find no reason to pursue South Seas' allegations further.

14. South Seas also argues that its two brief periods of silence are "nothing compared to" those of stations licensed to another Commission licensee, M.R.S. Ventures, Inc. ("M.R.S.").³⁷ South Seas asserts that some M.R.S. stations have been silent more than 3 years but the Commission has taken no action against M.R.S. In fact, M.R.S. no longer holds the licenses referred to by South Seas. Essentially, sometime between 2006 and 2007, M.R.S. permanently discontinued operations at its stations. Accordingly, as provided in Section 312(g) of the Communications Act,³⁸ the licenses for these stations automatically expired after the stations were silent for more than twelve consecutive months. The circumstances here are different. While M.R.S. did fail to notify the Commission that it had discontinued operation of its stations, it did not seek to bring the stations back on the air using facilities that varied from those authorized by the Commission. That South Seas did so without prior Commission authorization exacerbates its violation.³⁹ Moreover, while South Seas no longer holds a license to operate the Station, unlike M.R.S., South Seas lost its license when it failed to file an application to renew it. We conclude there has been no inconsistency in our enforcement here as the circumstances here differ greatly from those of M.R.S.

IV. CONCLUSION AND ORDERING CLAUSES

15. We have considered South Seas' Response to the *NAL* in light of the above statutory factors, our Rules, and the *Forfeiture Policy Statement*. We conclude that South Seas willfully and repeatedly violated Sections 73.1015, 73.1350 and 73.1740 of the rules. Furthermore, we find that South Seas' arguments do not support cancellation or reduction of the proposed forfeitures.

16. Accordingly, IT IS ORDERED, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,⁴⁰ that South Seas Broadcasting, Inc. SHALL FORFEIT to the United States the sum of eighteen thousand dollars (\$18,000) for willfully and repeatedly violating Sections 73.1015, 73.1350 and 73.1740 of the Commission's rules.⁴¹

17. Payment of the forfeiture shall be made in the manner provided for in Section 1.80 of the Commission's Rules within 30 days of the release of this Forfeiture Order. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.⁴² Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. *The payment must include* the NAL/Acct. No. and FRN No. referenced in the caption above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 979088, St. Louis, MO 63197-9000. Payment by overnight mail may be sent to U.S. Bank--Government Lockbox #979088, SL-MO-C2-GL, 1005 Convention Plaza, St. Louis, MO 63101. Payment by wire transfer may be made to ABA Number 021030004, receiving bank: TREAS NYC, BNF: FCC/ACV--27000001 and account number as expressed on the remittance instrument. If completing the FCC Form 159, enter the NAL/Account number in block number 23A (call sign/other ID), and enter the letters "FORF" in block number 24A (payment type

³⁷ *Id.* at 9.

³⁸ 47 U.S.C. § 312(g).

³⁹ *See supra* note 27.

⁴⁰ 47 U.S.C. § 503(b); 47 C.F.R. §§ 0.283, 1.80.

⁴¹ 47 C.F.R. § 73.3527.

⁴² 47 U.S.C. § 504(a).

code).⁴³ Licensee will also send electronic notification on the date said payment is made to Kelly.Donohue@fcc.gov. Requests for payment of the full amount of the forfeiture under an installment plan should be sent to: Associate Managing Director-Financial Operations, Room 1-A625, 445 12th Street, S.W., Washington, DC 20554.⁴⁴

18. IT IS FURTHER ORDERED, that a copy of this Forfeiture Order shall be sent by Certified Mail Return Receipt Requested, to South Seas Broadcast, Inc., 9408 Grand Gate Street, Las Vegas, NV 89143.

FEDERAL COMMUNICATIONS COMMISSION

Peter H. Doyle
Chief, Audio Division
Media Bureau

⁴³ See 47 C.F.R. § 1.1914.

⁴⁴ *Id.*